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9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

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11 **SECURITIES AND EXCHANGE**
12 **COMMISSION,**

13 Plaintiff,

14 vs.

15 **PREMIER HOLDING**
16 **CORPORATION, et al.,**

17 Defendants.
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Case No. 8:18-cv-00813-CJC-KES

STATUS REPORT

Judge: Hon. Keren E. Scott

Courtroom: 6D

Date: TBD

Time: TBD

1 Plaintiff Securities and Exchange Commission (“SEC”) submits this Status Report
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3 in connection with the recently transferred discovery dispute.

4 1. As discussed herein, in addition to providing this Court with the
5 background to this Motion to Compel Production, the SEC hereby seeks to: (i) confirm
6 whether, consistent with Your Honor’s Rules and Local Rule 37-1, the parties should file
7 a joint stipulation and/or a statement concerning the parties meeting and conferring in
8 connection with the SEC’s pending Motion to Compel Production (Docket Entry “DE”
9 327);¹ (ii) seek leave to file an objection to Defendant Randall Letcavage’s improper
10 filings in connection with the SEC’s motion, namely the sur-reply and objection to the
11 SEC’s proposed order (DE 336, 341); and (iii) seek leave to oppose Letcavage’s request a
12 60 day delay of any hearing on this Motion.
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16 2. By way of background, the SEC filed a Motion to Compel seeking
17 Defendant Letcavage’s production of certain documents. Currently, Letcavage is almost
18 five months delinquent.
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23 ¹ Defendant Letcavage alleges that the parties have not met and conferred. (ECF 341-1 ¶
24 8). In fact, the parties conferred regularly via email and phone on the outstanding
25 documents the SEC seeks to compel Defendant Letcavage to produce. The SEC can
26 provide the Court with evidence of numerous emails evidencing conferences over this if
27 needed. In addition, the SEC has forwarded a draft joint stipulation to Letcavage’s
28 counsel, but nevertheless requests Court direction so both parties are clear on what this
Court expects or requires herein.

1 3. After the parties' fully briefed the motion, on June 12, 2023, Defendant
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3 Letcavage filed an impermissible sur-reply.²

4 4. On June 14, 2023, Judge Carney referred this fully briefed discovery dispute
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6 to this Court (DE 338). Thus, the SEC's filings complied with the then-presiding
7 District Court Judge's practices and did not include a proposed order filed by the
8 movant SEC, a Joint Stipulation or statement concerning the parties' meet and confer.

9 5. The SEC has now filed a [Proposed] Order, consistent with Your Honor's
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11 Rule 7 and Local Rule 5.4, pertaining to discovery matters. (DE 339.)

12 6. Counsel for Defendant Letcavage filed an improper and baseless Objection
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14 to the [Proposed] Order (DE 341).

15 7. In addition, as a result of the above, the SEC respectfully seeks leave of
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17 Court to file a motion to strike Letcavage's impermissible sur-reply. Local Rule 7-10
18 states that sur-replies are improper "absent prior written order." In any event, the sur-
19 reply admits that not all of the documents have been produced – underscoring the need
20 for the Court's intervention to compel production.³

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22 ² L.R. 7-10 Reply Papers. A moving party may, not later than fourteen (14) days before
23 the date designated for the hearing of the motion, serve and file a reply memorandum,
24 and declarations or other rebuttal evidence. Absent prior written order of the Court, the
opposing party shall not file a response to the reply.

25 ³ Per Letcavage's sur-reply: "The actions of the Defendant has been more than
26 substantial compliance to any discovery request." In addition, Defendant's obligations
27 concerning discovery arise from Court Order (DE 326) and not simply the SEC's
28 discovery requests.

1 8. The SEC also seeks leave to request that the Court strike Defendant
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3 Letcavage's objection to the SEC's [Proposed] Order. (DE 341). In addition to being
4 procedurally improper—as both the Court and Local Rules call for the moving party to
5 file a proposed order⁴—the objection mischaracterizes the underlying factual record,
6 including the Court's view of the discovery dispute. Among other things, Letcavage's
7 objection to the proposed order states that Judge Carney “noted a lack of substance to
8 the Plaintiff's complaints.” In fact, during a December 2, 2022 hearing on the SEC's
9 motion seeking to have Letcavage held in contempt, Judge Carney stated that:
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12 The SEC is entitled to know what are the assets that he's got. What's out there?..
13 It seems like there is assertion of a Fifth Amendment privilege that was improper.
14 I sensed you were getting stonewalled in the information, and I don't have a
15 problem if we want to use the court proceedings to get the information that you
are entitled to. I have no problem with that.” (ECF 324 at 114-115).

16 It is clear from the Court's statement on the record that there is a substantive issue
17 concerning Defendant Letcavage's failure to produce documents. And he continues to
18 stonewall.
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20 9. Finally, the SEC objects to Letcavage's request for yet another delay in
21 hearing this Motion for at least 60 days. Respectfully, the SEC brought this motion to
22 compel Defendant Letcavage's production because Defendant Letcavage has ignored his
23 Court ordered discovery obligations for nearly five months. Awarding him essentially a
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27 ⁴ Hon. Scott's Rule 7. PROPOSED ORDERS FOR DISCOVERY MOTIONS: The
28 moving party shall submit a proposed order per the procedures in Local Rule 5-4.4.; L.R.
7-20 Orders on Motions and Applications. A separate proposed order shall be lodged
with any motion or application requiring an order of the Court, pursuant to L.R. 52-4.1.

1 two-month stay of his obligations would reward his improper conduct in failing to
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3 produce Court-ordered discovery.

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5 Respectfully Submitted,

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7 Dated: June 16, 2023

8 SECURITIES AND EXCHANGE
9 COMMISSION

10 By: 

11 Bennett Ellenbogen
12 Alexander Vasilescu
13 Attorneys for Plaintiff
14 Securities and Exchange Commission
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CERTIFICATE OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is: 100 Pearl Street, Room 20-100, New York, NY 10004.

On , on or before June 16, 2023, I caused to be served the document entitled Status Report on all the parties to this action addressed as stated on the attached service list:

☒ **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

☒ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated below.

Attorneys for Defendant Premier Holding Corp. and Randall Letcavage

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I declare under penalty of perjury that the foregoing is true and correct.

Date: June 16, 2023

/s/ Bennett Ellenbogen
Bennett Ellenbogen